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ROBERT M. HAROUN
SOFER & HAROUN
342 MADISON AVENUE, SUITE 910
NEW YORK NY 10173

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OFFICE OF PETITIONS

In re Application of :
Smallwood et al. :
Application No. 09/368,459 : ON PETITION
Filed: 4 August, 1999 :
Att'y Docket No. 693-009 :

This is a decision on the petition under 1.137(b),¹ filed on 25 February, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 20 February, 2003, for failure to timely reply to the Office action in accordance with

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Ex parte Quayle,² which set a two (2) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioner's reply filed on 25 February, 2004, has been deemed to place this case in condition for allowance.

The address listed on the petition is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application file is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: Robert M. Haroun
Sofer & Haroun
317 Madison Avenue, Suite 910
New York NY 10017

²1935 C.D. 11, 453 O.G. 213